CR.A.No. 429/2001

XII-189(Jail)C.J.P.R./9-9-

APPEAL OF PRISONER

No. S/No. 325/96 Name- ईश्वर दास

Father's Name- भगवान दास

Residence- मु० नौहर पो० सिवरीनगपत्ता जि० आजमगढ़ age- 40 वर्ष

Sentenced to- आजीवन कारावास on- 19-12-2000

under Section- धारा 302 भा०दं०वि० by भारदस्त मजिस्ट्रेट

मुकदमा 180/00 का फैसला सजायाफ्ता कैदी

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the prisoner states that he does not wish to be representated by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1. Date of Application for copy of Judgement सजायाफ्ता कैदी द्वारा दिया गया
2. Date on which copy received- 24-1-2001
3. Date on which Appeal sent- 29-1-2001
4. Whether the prisoner wishes to be represented or not- X

No- S/No- 325/96 -Name- ईश्वर दास पु० भगवान दास

confined in केन्द्रीय -Jail- गोरखपुर

No- 139 Dated- 29/1/2001 ~~499~~

Forwarded to the माननीय मण्डल कारा अधीक्षक गोरखपुर/अधिवक्ता

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent
अधीक्षक, जेल
केन्द्रीय कारागार
Jail

Date of receipt in- Office-

Date of receipt of record to accompany the-

Memo of Appeal to the Appellate Court-

No- Date.....

Forwarded to the:

Date of receipt in Appellate court-

XI-HC-78

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A-No. 429/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: HON'BLE SHRI L.C. BHADOO AND HON'BLE SHRI DHIRENDRA MISHRA, JJ

Criminal Appeal No. 429/2001

Appellant : Ishwardas

Versus

Respondent : State of Chhattisgarh

Shri J.D. Bajpai, Advocate for the appellant.

Shri D.K. Gwalre, Dy. Govt. Advocate for the State.

Learned counsel for accused/appellant submits that the accused is in detention since 10-5-1996, thereby he has already completed 10 years sentence and this appeal is likely to take some more time for final disposal, therefore, instead of considering bail application, appeal itself may be heard finally, to which learned counsel for the State has no objection.

Heard learned counsel for the parties.

ORAL JUDGMENT

(1-12-2006)

Per L.C. Bhadoo, J

By this appeal, accused-appellant Ishwardas has questioned legality and correctness of the judgment of conviction and order of sentence dated 19-12-2000 passed by learned Additional Sessions Judge, Janjgir in Sessions Trial No. 325/1996 whereby the learned Additional Sessions Judge after holding accused-appellant

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मामला क्रमांक ..... Cr. A. No. 429/01 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

guilty for commission of offence punishable under Section 302 of I.P.C. for committing murder of his wife Koshalyabai, sentenced him to undergo imprisonment for life and to pay a fine of Rs. 1,000/-, in default of payment of fine, to further undergo R.I. for six months.

2. Case of the prosecution is that accused Ishwardas along with his wife Koshalyabai (since deceased) went to earn livelihood to Andhra Pradesh wherefrom they returned 6-7 days prior to the date of incident. On the date of incident, accused insisted his wife to ~~go back~~ accompany him to Andhra Pradesh but she was not ready to go to Andhra Pradesh, therefore, accused assaulted the deceased with axe, as a result of which, she received injury on neck. ~~She succumbed to the injuries on 18-5-1996 in Hospital.~~ Matter was reported by P.W. 4 Bharatdas Vaishnaw to Police Station, Shivarinarayan, on which First Information Report Ex. P-7 was registered. Investigating Officer took up investigation, left for the scene of occurrence, after giving notice Ex. P-8 to Panchas prepared inquest Ex. P-9 on the body Koshalyabai. While in police custody, accused gave memorandum Ex. P-2 regarding the place where he kept the axe-weapon of offence, in pursuance to that, axe was taken into possession under Ex. P-4. Investigating Officer prepared site plan Ex. P-5, clothes of the deceased were taken into possession under Ex. P-6. After receiving injury, Koshalyabail was admitted in Primary health Centre, Shivarinarayan from where she was referred to District Hospital, Bilaspur where she received treatment, however

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मामला क्रमांक Cr. A. No. 429/01 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

she succumbed to injuries on 18-5-1996 in the hospital. Post mortem was conducted by Dr. R.K. Verma P.W. 14, who prepared post mortem report Ex. P-36. He opined that cause of death was hemorrhage and shock due to single fatal wound on the neck. After usual investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Janjgir, who in turn committed the case to the Sessions Judge, Bilaspur from where learned Additional Sessions Judge, Janjgir received the case on transfer for trial.

3. In order to establish the charge, prosecution examined in all 18 witnesses. Statement of accused was recorded under Section 313 of Cr.P.C. in which he denied the incriminating material appearing against him in prosecution evidence. Learned Additional Sessions Judge after hearing learned counsel for respective parties, convicted and sentenced the accused as aforementioned.

4. We have heard Shri J.D. Bajpai, counsel on behalf of the accused/appellant and Shri Akhil Mishra, Panel Lawyer on behalf of the State.

5. Shri Bajpai has not disputed homicidal death of Koshalyabai. Apart from that, Dr. R.K. Verma P.W. 14 has stated in his evidence that on 18-5-1996 he conducted post mortem on the body of Koshalyabai and noticed that there was a stitched wound on neck near mandible bone, jugular vein was cut which was ante mortem in nature, the injury was fatal and Koshalyabai died on account of

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मामला क्रमांक Cr. A. No. 429/01 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

hemorrhage and shock due to single fatal wound on the neck, death was homicidal in nature. Therefore, in view of medical evidence and oral dying declaration made by deceased before P.W. 4 Bharatdas, P.W. 5 Bhagwandas and Investigating Officer P.W. 13 N. L. Dhratlahre, it is established that death of deceased was homicidal in nature.

6. As far as involvement of accused in crime in question is concerned, Shri Bajpai has not disputed this fact also. P.W. 4 Bharatdas who is brother of accused has stated that on the fateful day, accused was sleeping along with his younger brother Santoshdas in a room whereas deceased Koshalyabai was sitting in verandah. When his father returned to house after taking bath, he woke him up. After waking up, he saw that his sister-in-law was lying injured in a pool of blood, on enquiry she disclosed that accused has assaulted her with axe on her neck. Above oral dying declaration has been corroborated by father of accused P.W. 5 Bhagwandas. P.W. 13 N.L. Dhratlahre has also stated that deceased has made oral dying declaration before him. Thus from oral dying declaration it is established that the accused assaulted the deceased with axe, moreover the axe-weapon of offence was recovered at the instance of accused and Dr. R.K. Verma has stated that it is possible to cause injury which was found on the neck of the deceased by the axe in question. Therefore, in view of the above evidence, involvement of the accused in crime in question is established.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

7. Shri Bajpai submitted that as the deceased and the accused returned from Andhra Pradesh 7-8 days prior to the date of incident and on the date of incident, accused was insisting the deceased that she should accompany him to Andhra Pradesh to earn livelihood, which was refused by the deceased and on that some altercation took place between the two and in a fit of anger, the accused without any intention to kill, assaulted the deceased, which proved fatal. Moreover, injury was inflicted on 7-5-1996 whereas Koshalyabai succumbed to injuries on 18-5-1996 thereby after 11 days of the date of incident, as such offence against the accused does not travel beyond Section 304 part II of I.P.C.

8. On the other hand, learned counsel for the State supported the judgment of the trial Court.

9. Having heard learned counsel for respective parties, having regard to the facts and circumstances of the case in which when the deceased refused to accompany the accused to Andhra Pradesh where he wanted to go back to earn livelihood, which infuriated the accused and all of a sudden without any premeditation in a fit of anger, he picked up axe and assaulted the deceased, moreover, the deceased died after 11 days, therefore, in the circumstances, it can safely be inferred that the accused assaulted the deceased with knowledge that the manner in which he assaulted the deceased, he may likely cause death, but intention

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

to cause death cannot be inferred. Therefore, offence against the accused does not travel beyond Section 304-II of I.P.C.

10. In the result, the appeal succeeds. Conviction and sentence imposed upon the accused under Section 302 of I.P.C. are set aside, instead thereof, he is convicted for offence punishable under Section 304-II of I.P.C. and sentenced to undergo R.I. for 10 years.

11. It is stated that accused is in detention since 10-5-1996, thereby he has already completed 10 years sentence. As such, if the accused is not required in any other case, he be set at liberty forthwith.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Pathak/—

2.12.06